

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

508I0588

HOUSE BILL NO. 1224

Introduced by: Representatives Bartling, Deadrick (Thomas), Juhnke, Olson (Mel), and Peterson (Bill) and Senators Nachtigal, Koetzle, and Symens

1 FOR AN ACT ENTITLED, An Act to revise the exemptions for the regulation of business
2 opportunities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-25A-3 be amended to read as follows:

5 37-25A-3. The following business opportunities are exempt from §§ 37-25A-7 to
6 37-25A-24, inclusive:

7 (1) Any offer or sale of a business opportunity for which the immediate cash payment
8 made by the purchaser for any business opportunity is at least twenty-five thousand
9 dollars if the immediate cash payment does not exceed twenty percent of the
10 purchaser's net worth as determined exclusive of principal residence, furnishings
11 therein, and automobiles. However, the director of the Division of Securities may, by
12 rules adopted pursuant to chapter 1-26, withdraw or further condition the availability
13 of this exemption;

14 (2) Any offer or sale of a business opportunity for which the purchaser is required to
15 make a payment to the seller or a person recommended by the seller not to exceed



two hundred fifty dollars during the period from any time before commencing operation to within six months after commencing operation of the business opportunity;

(3) Any offer or sale of a business opportunity if the seller has a net worth of not less than one million dollars as determined by the seller's most recent audited financial statement, prepared within thirteen months of the first offering in this state. Net worth may be determined on a consolidated basis if the seller is at least eighty percent owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this subdivision. The director may, by rules adopted pursuant to chapter 1-26, withdraw or further condition the availability of this exemption;

~~(4) Any offer or sale of a business opportunity if the purchaser has a net worth of not less than two hundred fifty thousand dollars. Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles. The director may, by rules adopted pursuant to chapter 1-26, withdraw or further condition the availability of this exemption;~~

~~—(5)—~~ Any offer or sale of a business opportunity if the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or a dealer registered pursuant to chapter 47-31A, if the purchaser is acting for itself or in a fiduciary capacity;

~~(6)~~(5) Any offer or sale of a business opportunity which is defined as a franchise in subdivision 37-25A-1(4) if the seller delivers to each purchaser at the earlier of the first personal meeting, or ten business days prior to the earlier of the execution by a

1 purchaser of any contract or agreement imposing a binding legal obligation on the
2 purchaser or the payment by a purchaser of any consideration in connection with the
3 offer or sale of the business opportunity, a uniform franchise offering circular
4 prepared in accordance with the guidelines adopted by the North American Securities
5 Administrators Association, Inc., as amended through September 21, 1983, and
6 registered with the division of securities pursuant to chapter 37-5A;

7 ~~(7)~~(6) Any offer or sale of a business opportunity for which the cash payment made by a
8 purchaser for any business opportunity does not exceed five hundred dollars and the
9 payment is made for the not-for-profit sale of sales demonstration equipment,
10 material, or samples, or the payment is made for product inventory sold to the
11 purchaser at a bona fide wholesale price;

12 ~~(8)~~(7) Any offer or sale of a business opportunity which the director exempts by order or a
13 class of business opportunities which the director exempts by rule upon the finding
14 that such exemption is not contrary to public interest and that registration is not
15 necessary or appropriate for the protection of purchasers.